LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 21 1962
JOHN F. DAVIS, CLERK

In The
SUPREME COURT OF THE UNITED STATES
October Term 1962

No. 268

LUTHER ROBINSON MADDOX,
Petitioner,

v.

RAYMOND O. SHROYER
and MARY K. SHROYER, his wife, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT WITH APPENDIX

LUTHER ROBINSON MADDOX,
In Propria Persona, Acting Pro Se,
525 Woodward Building,
Washington 5, D. C.
(PHONES: DI 7-2323; CO 5-4111)

DATED: July 21, 1962

INDEX

	Pages
Opinion Below (Appendix A)	2
Jurisdiction	3
Questions Presented	3
Constitutional Provisions, Statutes, Rules, etc. (Appendix I and J)	5
Statement of Case	5
Reasons for Granting Writ	16
Argument	23
Conclusion	27

Table of Cases Cited

American Fire and Casualty Co. v. Finn, 341 U.S. 6, 95 L. Ed. 702, and 19 A.L.R. 2d 738	18
Barber v. Tuberville, 218 F. 2d 34	23
Berlinsky v. Eisenberg, 190 Md. 5	6
Buller v. DeButterville v. Scoville, 239 F. 2d 824	20
California Brewing Co. v. Red Star Yeast Products Co., 19 F.R.D. 179	8
Castleman v. Alamo Plaza Inc., 296 F. 2d 521	18
Conley v. Gibson, 355 U.S. 41, 2 L. Ed. 2d 80	20
Dulin v. Markum, 231 F. 2d 833	23
Federal Savings and Loan Association of Bremerton v. U.S., 295 F. 2d 481	26
Federal Deposit Insurance Co. v. Alker v. Welsh, 234 F. 2d 113	22
Fergueson v. Bartel Brewing Co., 284 F. 2d 855, 77 A.L.R. 2d 1419, 1492	23
Gill v. Stolow, 240 F. 2d 269	18
Hardy v. Barkers Life and Casualty Co., 222 F. 2d 827	26
Hickman v. Taylor, 329 U.S. 495	25

Pages

Hovey v. Elliott, 167 U.S. 409 23
Independent Production Corp. v. Loew's Inc., et al., 283 F. 2d 730 18
Knetsch v. U.S., 364 U.S. 958, 5 L. Ed. 2d 128, 81 S. Ct. 132 17
Kuzma v. Bessemer and L. E. R. Co., 259 F. 2d 456 18
Lee v. Flemming, 158 F. 2d 984 18
Lyford v. Carter, 274 F. 2d 815 18
Marshall v. Sawyer, 301 F. 2d 639 22
Marty v. Grosselli Chemical Co., 303 U.S. 197, 58 S. Ct. 507, 82 L. Ed. 745 20
Miles v. City of Chandler, 297 F. 2d 690 25
Mitchell v. Roberts DeMario Jewelsry Inc., 361 U.S. 288, 4 L. Ed. 2d 323, 80 S. Ct. 332 18
Nagler v. Admiral Corp. et al., 248 F. 2d 319 18
Moore v. McAllister, 141 A. 2d 176 6
Northbranch Products, Inc. v. Fisher, 284 F. 2d 611 26
Padovani v. Brauchausen, 293 F. 2d 546 18
Pollor v. Columbia Broadcasting System, Inc., 368 U.S. 464 17
Preble v. Johnson, 275 F. 2d 275 22
Reserve Life Insurance Co. v. Frankfather, 225 P. 2d 1035, 123 Col. 77, 39 A.L.R. 2d 146 21
Sandee Manufacturing Co. v. Rohm and Haas Co., 298 F. 2d 41 22
Slagle v. U.S., 288 F. 2d 673 21
Societe Internationale etc. v. Rogers, 357 U.S. 197, 2 L. Ed. 1255 17
Syracuse Broadcasting Corp. v. Newhouse, 295 F. 2d 269 18
Thomas v. Hardesty, 143 A. 2d 618 6
U. S. v. White County Bridge Commission, 275 F. 2d 529 21
Woods v. Cannady, 158 F. 2d 184 23

Pages

Other Authorities Cited

19 A.L.R. 2d 738 18
39 A.L.R. 2d 146 21
77 A.L.R. 2d 1419, 1492 26
Barron and Holtzoff, Federal Practice, Sec. 255, p. 65 21
Maryland Code, 1957 Ed., Art. 23, Secs. 90 and 91(c) 5
Moores Federal Practice, 2d Ed., Vol. 2, p. 1711 21
Rules 38(a) and 83, FRCP (also 54(b)) 24, 25
Rule 60(b), FRCP 15, 22
28 U.S.C. 1254(1) and 2072 ..... 3, 26

APPENDIX

Appendix A (Opinion of Court Below) 29

Appendix B (Orders of McGuire, J., filed 2/19/59, 4/18/61, 5/26/61, 5/25/61, 6/1/61, 6/28/61 33

Appendix C (Orders of Curran, J., RE HILLAND, filed 7/30/58 and 9/15/59) 37

Appendix D (Orders of Pine, CJ., filed 12/10/58, and 6/26/59) 39

Appendix E (Orders of Hart, J., filed 6/29/60 and 8/10/60, RE Depositions of certain Defendants) 40

Appendix F (Order of Holtzoff, J., Memo., of Matthews, J., Order of Matthews, J., Plaintiff's Motion to amend Memo. of Matthews, J., filed, respectively, 11/6/59, 12/28/59, 3/14/60, 3/12/60, RE Osborne's Deposition) 41

Pages

Appendix G (Orders of Holtzoff, J., RE Amended Complaint, Memo. on Answer of District Supply and Charles Visek, Memo. on Answer of Caraway, Memo. on Answers of Stanley Visek, Porreca, and Smith, filed, respectively, 10/16/57, 11/4/57, 10/24/57, 11/6/57, 4/28/58; also, Default Judgment against Elmer L. Young (Keech, J.), filed 5/3/58) 44

Appendix H (Shroyers' Motion for Affirmative Relief, filed 3/4/59, Orders of McGuire, J., filed 3/11/59 and 3/19/59; Shroyers' Motion for other Affirmative Relief, filed 4/1/59, and Order of Holtzoff, J., filed, 4/28/59, denying Motion; Memo. on Plaintiff's Motion for adjudging in contempt the Shroyers, filed 6/10/59) 48

Appendix I (Reference and Excerpts to Fifth Amendment to Constitution, Federal Rules of Civil Procedure; 1, 8, 16, 26, 33, 34, 36, 38, 45, 83; also Local Rule 12 and Pretrial Instructions to Counsel (Pine, CJ), 1/29/60) 53

Appendix J, Rules 55 and 60(b), FRCP; Notices from Clerk and Assignment Commissioner of Trial Court) 70

In The

SUPREME COURT OF THE UNITED STATES

October Term 1962

No.....

LUTHER ROBINSON MADDOX,
Petitioner,

v.

(1) RAYMOND O. SHROYER, (2) MARY K. SHROYER, HIS WIFE; (3) JAMES LEWEY CARAWAY, (4) CELIA M. CARAWAY, HIS WIFE; (5) DISTRICT SUPPLY, INC., (6) CHARLES VISEK, INDIVIDUALLY AND AS PRESIDENT THEREOF; (7) FIDELITY INVESTMENT & TITLE CO., INC., (8) JAMES C. CHRISTOPHER, INDIVIDUALLY AND AS SECRETARY THEREOF; (9) OWEN E. OSBORNE; (10) STANLEY VISEK, INDIVIDUALLY AND AS VICE PRESIDENT, TREASURER AND DIRECTOR OF DISTRICT SUPPLY; (11) FRANK GEORGE PORRECA, INDIVIDUALLY AND AS DIRECTOR OF DISTRICT SUPPLY; (12) ELMER L. YOUNG, INDIVIDUALLY AND AS DIRECTOR AND GENERAL MANAGER OF DISTRICT SUPPLY; (13) SAMUEL J. SMITH, INDIVIDUALLY AND AS FORMER ACCOUNTANT OF DISTRICT SUPPLY; (14) ARTHUR J. HILLAND, INDIVIDUALLY AND AS ATTORNEY FOR SHROYERS (Appellees Below),
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, Luther Robinson Maddox, prays that a writ of certiorari issue out of this Court to review a judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled cause on April 26, 1962, affirming the judgment of the United States District Court for the District of Columbia, wherein the District Court, which will be called hereinafter the *Trial Court, dismissing the action with prejudice* against all the defendants therein. A petition for a rehearing was duly filed on May 11, 1962, and it was denied on May 21, 1962 (R. 129-137). An order of June 19, 1962, extended further time within which Petitioner might petition for certiorari, to and including July 21, 1962 (R. 186(a)).

OPINION BELOW

The Opinion of the United States Court of Appeals for the District of Columbia Circuit, hereinafter called the *Court Below*, is not yet officially reported, but a copy of such opinion as was served upon Petitioner is annexed hereto as Appendix "A" (R. 124-127). The Pertinent opinions and orders, etc. of the *Trial Court* are shown as Appendices, Annexed hereto, "B", "C", "D", "E", "F", "G", "H", etc.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C., Section 1254(1) and pursuant to Rule 19 of this Court where (1) the *Court Below* has decided this case in conflict with decisions and principles of law laid down not only by this Court, but also by other Circuit Courts of Appeal—and even contrary to the principles established in its own Circuit; and (2) where it has decided important questions of law involving the Federal Rules of Civil Procedure that should be settled by this Court; (3) and where it has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the *Trial Court* as to call for the exercise of this Court's power of supervision; (4) and, further, where it has decided federal questions in conflict with applicable decisions of this Court and well-established law.

The *Trial Court* took jurisdiction under the District of Columbia Code, Title 11-306.

QUESTIONS PRESENTED

1.—Whether the *Court Below* erred:

(a) When it held that the *Trial Court* was amply justified in dismissing the action of Petitioner, with prejudice, against all the defendants in the case on June 1, 1961, and further held that the affirmation of the judgment of the *Trial Court* rendered "moot" the other questions raised by Petitioner as having been erroneously committed by the *Trial Court*;

(b) When it failed to pass on the question as to whether

the *Trial Court* had the power to pass on (under Rule 60(b), FRCP) and set aside the judgment that had stood of record against Respondent Young since May 3, 1958 (R. 26-34);

(c) When it refused to Rehear and reconsider its judgment of April 26, 1962, affirming the summary action and judgment of the *Trial Court* (R. 129-137);

(d) When it failed and refused to take cognizance of the fact that the *Trial Court* flouted and ignored the provisions and requirements of the Federal Rules of Civil Procedure and the Local Rules promulgated and established pursuant to Statutory authority (28 U.S.C., Section 2072);

(e) When it held, in effect, that Petitioner had been afforded *fair hearings* in the *Trial Court* and that he had not been deprived of *due process of law and a jury trial*, by affirming the action of that *Trial Court*, when it entered that drastic and unsound Preclusion Order of June 1, 1961;

(f) When it held in effect that Judge McGuire was not grossly biased and prejudiced throughout his rulings against Petitioner (R. 7-34, 39-42, 121-123);

(g) When it held and dismissed the appeal as against Hilland from the Order of *Trial Court of December 10, 1958* (R. 165-170, 173) and dismissed Counts Eight (8) and Nine (9) against Hilland.

2.—Whether or not the Shroyers submitted themselves for all purposes in this case when they asked for affirmative relief, not only in the *Trial Cou* but also in the *Court Below?* (R. 39-44, 138-145, 172).

CONSTITUTIONAL PROVISIONS, STATUTES, RULES, ETC., INVOLVED

The pertinent portions of the Constitutional provisions, Statutes and Rules of Civil Procedure, supplemented by Local Rules of *Trial Court*, are set out as Appendix I and J.

STATEMENT OF THE CASE

This case was filed in May, 1957, against the first nine (9) defendants as shown in the caption and it was attacked by certain defendants (respondents herein); it was amended, as of course, on October 5, 1957, in six (6) Counts, and it was attacked again, by Galiher and Newton's clients, but Judge Holtzoff overruled their objections and they answered the *amended complaint* as it stood, generally denying all material allegations therein (R. 1); and on April 10, 1958, *Counts Seven (7) and Eight (8)* were added bringing in new parties (5), numbers 10 to 14, inclusive, and the various Counts charged the Respondents (defendants in the *Trial Court*), which will be called hereinafter by names, individually, fundamentally and basically, with a malicious conspiracy: (1) to maliciously breach and interfere with contracts of employment between Petitioner and his clients, the Shroyers, written contracts under seal made in the District of Columbia, and (2) to commit maliciously and bring about a breach of implied warranty under an Assignment and Power of Attorney, with full control over, an escrow fund of $17,000.00 held by the Fidelity Company, a Maryland Corporation, doing business in Montgomery County, Maryland; and, further, (3) to commit maliciously abuses of legal processes against this Petitioner, in an Equity Case (No. 17,356) in Mary-

land, all of which was a continuing conspiracy. The contracts of employment were executed by the Shroyers in 1954 (R. 192(27), Exhibits 19-22, incl., see O/R), and the Assignment and Power of Attorney were executed in 1955. The Petitioner was discharged by the Shroyers on September 15, 1956, as a result of the conspiracy charged (R. 189(6)), which was a continuing conspiracy to injure and damage this Petitioner, and thereby to deprive, cheat and defraud Petitioner out of his fees earned and to be earned, under those contracts of employment.

Under those contracts of employment by the Shroyers, Petitioner was engaged to defend an Equity Suit in Montgomery County, Maryland, for the Shroyers, brought in May, 1954, by the District Supply, a Pennsylvania Corporation, doing business in the District of Columbia and Maryland, since January, 1950, and having its main office in the District of Columbia.

In that equity suit Raymond O. Shroyer was charged with illegal conversion of funds of the District Supply, prior to September 1953, when he was an officer and an employee of the District Supply. Mary Shroyer, his wife, was brought into the suit because she was a joint owner (*by the entirety*) of the property attacked. When that Equity Suit was filed against the Shroyers in Maryland, no court in Maryland had any jurisdiction or power to entertain a suit in that State by the District Supply *under the Maryland Code* (See Art. 23, Sections 90 and 91(c). Hence, whatever decrees or orders that court may have entered in the equity case was a nullity (*Moore* v. *McAllister*, 141 A. 2d 176; *Thomas* v. *Hardesty*, 143 A. 2d 618). Cf. *Berlinsky* v. *Eisenberg et al.* (1947), 190 Md. 636.

In that Equity Suit, the District Supply, represented by F. Archie Meatyard, Jr., a United States Commissioner, and Richard W. Galiher, both resident of Montgomery County, claimed illegal conversion of some $22,000.00, and asked for an injunction to stop the sale of some real estate that had been advertised for sale by the Shroyers. Under Petitioner's employment contract of July 1, 1954, he was given full power and authority to defend that equity suit, against the Shroyers, in any way his judgment might dictate, and plans were made immediately, for that defense, accordingly, under the advice given him by his clients at that time: That is, to fight the case aggressively to the "bitter end", in order that *they might be cleared of any stigma* which might be attached to such a charge, and also on what was threatened, at the time, as an embezzlement charge in the Criminal Court of the District of Columbia —which actually developed later as Criminal No. 713-56 (R. 79-90).

Thereafter, about August 1954, Petitioner was engaged by Raymond O. Shroyer to look after his interests and defend him in whatever action might be taken against him in the Criminal Court, or otherwise, in the District of Columbia. Mary Shroyer, his wife, guaranteed that written contract of employment for Petitioner's fees and expenses, as provided for therein, and by that contract's provisions Petitioner was given full power and authority to conduct the defense of Shroyer *in any way his judgment might dictate*, in any court or courts to which his judgment might dictate, or deem the defense should be pursued, in order to clear their names and show that Raymond O. Shroyer *had never embezzled one dime*, as he had assured Petitioner, and that the built-up charge by the District Supply, and others, was done for revenge, through its President,

Charles Visek. Shroyer had left the District Supply about August, 1953, and started his own business, known as the Ray Supply Company, dealing in buying and selling janitors supplies, and that Company was a very strong competitor of the District Supply.

In the defense of the Equity Suit in Maryland, the District Supply was charged by the Shroyers as having spread around through its officers and agents, and others, that he (Shroyer) had embezzled funds of the District Supply, and that rumor or charge soon reached his creditors, who began to press him quite hard, and he then employed Petitioner, under another written contract, to represent the Ray Supply Company in an effort to have his creditors hold off until that Equity Suit at Rockville, Maryland, might be settled. About April 1955, the Ray Supply Company became a partnership, and Caraway became a partner, with his wife, Celia M. Caraway, one of the Respondents herein. The Caraways resided in Virginia. So, then the Ray Supply Company was owned sixty percent by the Shroyers and forty percent by the Caraways. James Lewey Caraway was duly served in the District of Columbia; the personal service made on his wife in Virginia was quashed, but she was not dismissed as a defendant in the case until the Order of June 1, 1961, by Judge McGuire, *dismissing the action with prejudice against all defendant* (See *California Brewing Company Case*, 19 F.R.D. 179).

Count Seven (7) brought into the case, Stanley Visek, Porreca, Young, Smith and Hilland. Stanley Visek was Vice President and Treasurer of the District Supply; Porreca was a former Director and employee of District Supply; Young was a Director and General Manager; Smith was a

former Accountant of the District Supply. Hilland was brought into the case as he was charged with joining the conspiracy, working in concert with others, and aiding and abetting in such conspiracy, directly, personally, and indirectly through agents and others, to injure and damage Petitioner under the planned objective, scheme and purpose of the conspiracy.

After Petitioner was discharged by the Shroyers, Hilland, who had previously been an Associate of Walter B. Guy, the Senior Member of the law firm of Guy, Mann and Guy, whose law firm was then in the Tower Building, but formerly in the Woodward Building, was engaged as an attorney by the Shroyers, through the efforts of the law firm of Guy, Mann and Guy, and thereafter became, openly, Petitioner's successor as Shroyers' Attorney. About November, 1956, Hilland entered his appearance in the *Criminal Case against Raymond O. Shroyer*, and also one Thomas M. Kindness, an Associate in Hilland's Office at the time; thereafter, in the Equity Case at Rockville, Maryland, Hilland and one Mack (also an Associate or an employee of Hilland) entered their appearances for the Shroyers in that case (1957). The allegations in Petitioner's case show that the objective, purpose and scheme of the conspiracy to damage Petitioner was brewed and hatched about July 1956 and concretely put in its appearance by a letter of August 28, 1956, written by Osborne, addressed to the Shroyers (before Petitioner was discharged), which suggested and directed therein that the Shroyers engage one Beatty (Osborne's attorney) to supersede Petitioner. So, from there the Shroyers went to one Artis in the Tower Building, and from Artis to Guy, Mann and Guy, and from that law firm to Hilland. Louis H. Mann interviewed Raymond O. Shroyer first, upon

being introduced by Artis, then Guy took over on the 10th day of September, 1956, before Petitioner was discharged by the Shroyers, and from Guy 2d Shroyer was taken to Hilland on the 20th of September, 1956, according to the record (See depositions of Osborne, Beatty, Mann and Guy 2d, Shroyers, Hilland and Mack, O/R). Osborne's letter is Exhibit No. 1 for Petitioner in Deposition of Mary K. Shroyer, taken in Baltimore about May 3, 1959, *after much opposition had been set up.* Hilland and Mack are both residents of Montgomery County, Maryland, and have law offices at Rockville, where that Equity Case was instituted against the Shroyers. The record shows that on September 18, 1956, Mann requested Petitioner to turn over to him all records and files in the Shroyers' matters that were in his possession, in order that they might proceed with the matters, for the Shroyers, but for some reason, or no reason, that firm changed its mind about representing the Shroyers *directly and openly* (See O/R, P/T/S).

The record shows Galiher and Meatyard, both of whom represented the District Supply, Charles Visek, its President, and others, with Hilland and Mack, and others, were working in concert, together, to get Petitioner out of the cases and matters of the Shroyers in order that they might settle all controversies between the Shroyers and the District Supply, and others, on their own terms, *and to their financial advantage.* The indictment that was handed down by the Grand Jury on July 16, 1956, found only probable cause for embezzlement against Raymond O. Shroyer for an amount of about $6,000.00, whereas the District Supply claimed in the equity suit that Shroyer had converted illegally about $22,000.00, *and forced the Shroyers through the criminal proceedings to pay the District Supply about*

$12,000.00 by and through that equity suit, under a consent judgment, after Petitioner was discharged, the criminal case dismissed for lack of evidence and a failure of the prosecuting witness to prosecute—also after the Counter-claims and Cross-claims of about a million and a half dollars of the Shroyers against the District, Supply and others in that equity case had been agreed to be dismissed.

Count Eight (8) as amended against Hilland (R. 86) asked the *Trial Court* to impound certain papers, documents and records, pertinent and materially necessary to Petitioner for his use in preparation for trial of the instant case, and for other relief, which records had been turned over to Hilland by the Shroyers on or about November 1, 1956, for the defense of the criminal case—said records having been turned over to Shroyer by Petitioner, under the Court's direction, for such defense (see O R). Counts Eight and Nine as against Hilland were further dismissed *under orders of March 7 and September 15, 1959* (R. 77, 78).

Counts Ten (10) and Eleven (11) were counts (R. 2, 96-102) proposed against Ferdinand J. Mack and William J. Donnelley, Jr. (an employee of Galiher at that time); Mack was an employee or an Associate in Hilland's office, after Kindness had left, about January, 1957. These proposed counts charged Libel and Slander against Petitioner committed maliciously in argument of the instant case, in the *Trial Court*, to prejudice the court in their favor, and Petitioner charged that the false statements were irrelevant, impertinent and immaterial, to the question and issues before the *Trial Court* at that time. The *Trial Court* refused to allow these counts (R. 96-102) to be filed, and Mack and Donnelly added. Obviously, the *Trial Court* determined the *matter of privilege and malice on procedural*

matters and before trial, thus violating the Federal Rules *on avoiding multiplicity of suits and actions*. For the *Trial Court* stated on the hearing of the motion to deny bringing in the new parties that it was *clearly libelous and slanderous, "unless privileged"*, and Galiher, on behalf of his clients admitted that fact (R. 107).

There was a great deal of unnecessary delays created in the progress of this case in the *Trial Court*, due primarily to the Respondents *fighting bitterly every step of the way*, by refusing to answer questions, properly, under Rule 33 (FRCP) and forcing Petitioner finally to use the expensive method of taking depositions; then witnesses moved to *quash subpoenas* and *Notices* to appear for taking of their depositions, and thus effecting wastage of time and expense, contrary to Rule ONE. For example, the Shroyers created great confusion and wastage of time in Baltimore, and locally, through their attorneys Re the taking of their depositions, *when personal service upon them had been quashed*, in the instant suit, *and by asking for affirmative relief* (R. 39-43). Motions to dismiss the Amended Complaint, filed on October 5, 1957, by District Supply and others, were overruled; *Caraway then moved to strike, but that was overruled by Judge Holtzoff*, (Ap. G), and then answers were filed setting up generally a denial of all essential allegations in the Amended Complaint (117-119). That made an issue so far as the District Supply, Charles Visek and Caraway were concerned. Witnesses Donnelly and Galiher asked for extension of time within which to take their depositions and obtained it; they also moved to quash service of subpoenas served upon them (R. 3, 4). Witness Meatyard also moved to quash service of subpoena and Notice to take his deposition, and held up matters for many months. Witness Beatty moved to quash service

of subpoena and Notice to take his deposition, also; he, too, is a Marylander. Hilland and Mack followed suit and caused great delays and wastage of time and effort. Certain Respondents have charged however, that Petitioner caused all of the delays and wastage of time—*and the filling up of the record unnecessarily. The record itself brands the latter as false.*

Moveover, when what appeared at the time, the last two witnesses to be deposed under Rule 26 (FRCP) in the case, they did not appear (Young and Carlin). When these matters came before Judge McGuire, he did not aid Petitioner; but his action taken brought about further confusion and wastage of time, contrary to the Rules and the law—and justice (R. 24, 25). No relief was given Petitioner by that Order of April 18, 1961 (See O/R), but *the Trial Court* imposed further unjust hardships upon him. *Sua sponte* that Order set this case down for *Pretrial and Trial*, and directed this Petitioner to amend his complaint to conform to the Federal rules by May 16, 1961, when there were motions pending in the case *and it was not at issue as a whole* (see Ap. I); one defendant had defaulted and a judgment had been standing against him since May 3, 1958 (R. 119). The case was at issue against District Supply, Charles Visek, Stanley Visek, Porreca, Smith and Caraway (Defendants No. 3, 5, 6, 10, 11, 13).

On February 18, 1959, Judge McGuire entered an order delaying (R. 7, 21-23) the taking of Witness Newton's deposition, and *sua sponte* directed from the bench on February 13, 1959, when Petitioner was neither represented nor present, nor given proper notice of the hearing, *that the case be tried on Wednesday, April 15, 1959, and that all discovery be completed by that date.* The order when

signed, however, stated only that discovery be completed and a certification for trial be executed. See letter in file (R. 21-23) in this connection, addressed to Judge McGuire, with proposed counter order, at the bottom of which is this notation: "What I said at the time is incorporated in the order. McGuire 2/19/59." Petitioner moved to vacate that order, or so much of it as did not affect the continuance of Newton's deposition, but so far as the record shows, no formal order was ever entered upon that motion (See O/R).

On May 16, 1961, a preliminary hearing was had before the Pre-Trial Examiner, a Pre-Trial Statement had been filed with him by the Petitioner on May 12, 1961, four days before, as directed by the Assignment Commissioner (Ap. I and J) and in accordance with the Local Rule (R. 37, 38); and on that date, the 16th day of May, 1961, *certain defendants only* (to-wit, District Supply, Charles Visek, Stanley Visek, Young, Porreca and Smith, with Caraway) presented their Pretrial Statements (R. 196-199)—not timely and not in accordance with the Local Rules—to the Pre-trial Examiner. Petitioner noted an exception and asked for judgment by default in line with Local Rule 12 and Pretrial Instructions to Counsel of January 29, 1960; and, then, Petitioner asked for the matter to go before the Pre-Trial Judge, in accordance with the Local Rule. At that time, however, the Pretrial Examiner contended that he had discretion in the matter as to whether he should default the defendants for not having timely filed their pretrial Statements. The Pretrial Judge being absent from duty on that date, owing to illness as reported, and over Petitioner's objections, the Pretrial Examiner took the matter before Judge McGuire, and Judge McGuire would not continue the matter until the Pretrial

Judge returned to duty, whereupon certain proceedings were had before Judge McGuire (R. 14-21). See letter in file of Pretrial Examiner, dated and filed on September 5, 1961, and also the Pretrial Statements (R. 6, 187-200).

On May 16, 1961, Judge McGuire permitted Young (R. 14-20, 26, 27) to file a motion to set aside the default judgment of *May 3, 1958*, against him, and after some strenuous arguments and colloquies, he did allow Petitioner his five days (under local rule) to file an objection, to Young's Motion to vacate judgment under Rule 60(b) (FRCP). *But the record shows that Judge McGuire had his mind already made up to set that judgment aside, whether he had the power to do it or not* (R. 20).

> "THE COURT: My disposition was not only to let it be filed but to grant the motion to remove the default in the circumstances as presented here. However, I will let it be filed: give you your time to answer it whatever way you want to but, in the meantime, I again reiterate, repeat and recapitulate that you must file a complaint that is succinct and condensed in conformity with the rules and, if you don't, I will dismiss the cause."

Petitioner promptly filed his objections, showing no jurisdiction to set aside the default judgment against Young of more than three-years standing (See Ap. J) *but it was overruled;* and under date of May 26, 1961, an Order was entered directing the default judgment against Young be set aside and vacated, and that the verified answer of Young be filed forthwith (R. 26, 27, 121-123). Judge McGuire there set aside another Judge's Order, which is contrary to practice in the *Trial Court*, had no hearing on

the *OPPOSITION of Petitioner*, and such action as that is contrary to well-established law and practice.

On May 26, 1961, Petitioner left with the *Pre-Trial Judge* a Motion (See Ap. 1) for Extension of time within which to complete discovery proceedings in the instant case, before 10:00 A.M., in view of the new developments, and it was filed by that Judge's Clerk in Petitioner's presence before 11:30 A.M., *on that date, and that motion asked for other relief* (R. 35-39). That Motion was never acted upon, *and it is still pending*. Petitioner's Motion to vacate order of September 15, 1959, dismissing the Eighth and Ninth Counts against Hilland, as amended, has never been acted upon, so far as the record shows (R. 4).

On May 25, 1961, Judge McGuire passed another order directing Petitioner to file "an Amended Complaint to conform *with the spirit and the letter of the Federal Rules of Civil Procedure within ten days from May 16, 1961, and upon failure to so do* this cause *will be dismissed with prejudice.*" (R. 34)—WHEN THIS CASE WAS AT ISSUE AGAINST SIX DEFENDANTS AND A DEFAULT JUDGMENT HAD BEEN STANDING AGAINST YOUNG SINCE MAY 3, 1958. Petitioner filed a Motion on June 10, 1961, to set aside and vacate order of June 1, 1961, *dismissing this action with prejudice against all defendants*, but it was denied (R. 28, 34).

REASONS FOR GRANTING WRIT

Rule 19 of this Court suggests that a Writ of Certiorari may be granted where there are special and important reasons therefor shown by the Petitioner: (1) Where Court of Appeals has rendered a decision on the same

or similar matters in conflict with another Court of Appeals, and where a Court of Appeals has decided a Federal question or questions in conflict with applicable decisions of this Court; (2) Where a Court of Appeals has decided an important question of federal law that has not been decided but should be settled by this Court; and (3) Where such Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the *Trial Court*, as to call for an exercise of this Court's supervision.

A—Point One

By affirming the Trial Court's rulings and judgment *dismissing the action with prejudice against all the defendants*, in the instant case, the *Court Below* has rendered a decision not only contrary to other Circuit Courts of Appeal but even contrary to decisions in its own Circuit, and also contrary to well-established law under this Court's decisions. The Federal Rules of Civil Procedure have been flouted and ignored, as well as the Local Rules of the *Trial Court*, by the *Trial Court*, and the *Court Below* has sanctioned and approved such practice and procedure. These are questions of such great importance, as a procedural matter, that they should be reviewed by this Court and rectified. The Federal Rules were approved by this Court and enacted into law by Congress (28 U.S.C. 2072). This Court has, recently, recognized the importance of such procedural questions and has granted a Writ in *Societe Internationale etc.* v. *Rogers*, 357 U. S. 197 (reversing 243 F. 2d 254, 100 U.S. App. D.C. 148), 2 L. Ed. 2d 1255; also in *Pollor* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464, reversing both lower courts. Cf. *Knetsch* v. *U.S.*, 364 U.S. 958, 5 L. Ed. 2d 128, 81

S. Ct. 132; *Mitchell* v. *Roberts DeMario Jewely, Inc.*, 361 U.S. 288, 4 L. Ed. 2d 323, 80 S. Ct. 332; *American Fire and Casualty Co.* v. *Finn*, 341 U.S. 6, 95 L. Ed. 702, and 19 A.L.R. 2d 738.

B—Point Two

The fundamental *due process of law* is that parties to controversies are entitled to have them determined by *an impartial tribunal* (*Lee* v. *Flemming*, 158 F. 2d 984; Appeals should be decided upon their merits alone (7CA. 1961), 289 F. 2d 382. A *dismissal without trial*, such as this, is reversible error (*Castleman* v. *Alamo Plaza, Inc.* (6CA, 1961), 296 F. 2d 524; *Independent Production Corporation* v. *Loew's Inc. et al* (2CA. 1960), 283 F. 2d 730. *Gill* v. *Stolow* (2 CA. 1957), 240 F. 2d 269; *Syracuse Broadcasting Corporation* v. *Newhouse* (2CA. 1959), 295 F. 2d 269; *Nagler* v. *Admiral Corporation et al.* (2CA. 1957), 248 F. 2d 319): And Cf. *Lyford* v. *Carter* (2CA. 1960); 274 F. 2d 815 and *Kuzma* v. *Bessemer and L. E. R. Co.* (3CA. 1958), 259 F. 2d 456. That order of June 1, 1961, was too drastic.

The matters involved herein are very similar to those involved in *Padovani* v. *Bruchausen* (2CA. 1961), 293 F. 2d 546, cited in the *Syracuse Case*, supra, where a Mandamus issued, and that Court said:

> "Nevertheless, we do have an overriding responsibility to see that justice is done between litigants before the court. (citing authorities, including the Gill, Independent Production, Sociate Internationale etc., Cases, supra) And it would seem a part of ise judicial economy, if not necessity, to meet that issue

now without subjecting the parties and the court to the delay and burden which would be caused by the ultimate reversal clearly indicated."

In the *Gill Case*, at p. 670, that Court said:

"Reluctant as we are to interfere, we feel that this is an occasion where viewed with the hindsight afforded us *by a study of the entire record, the penalty assessed is too drastic and the case must be returned to accord defendants a trial of the seriously contested issues of facts involved.* In final analysis, a court has the responsibility to do justice between man and man; and general principles cannot justify denial of a party's fair day in court *except upon a serious showing of a willful default.*"

These principles of law, as laid down there, show justice done and such principles are contrary to the holdings of the *Court Below*, wher it approved and affirmed the rulings of the *Trial Court. In Societe Internationale Case*, supra, there was involved questions of Federal Practice and Procedure and this Court granted a writ (reversing the lower courts).

In the *Pollor Case, supra*, decided (1962), at p. 473, this Court said: (Reversing the lower courts)

"We believe that summary proceedings should be used sparingly in complex litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators and hostile witnesses thicken the plot (citing *Kensil* v. *Silas Mason Co.*, 334 U.S. 249 and *Arends* v. *U.S.*, 322 U.S. 419)."

C—Point Three

Now as to the pleadings of Petitioner being sufficient or insufficient, and the rulings of Judge McGuire being a gross abuse of discretion to order them amended under the circumstances and fact issues, here are cases that should control, definitely: In *Marty* v. *Grasselli Chemical Co.*, 303 U.S. 197, 58 S. Ct. 507, 82 L. Ed. 745 (Rule 8(a)), this Court held:

> Pleadings are intended to serve as a means of arriving at a fair and just settlement of controversies between litigants. They should raise no barriers which prevent the achievement of that end. (See *Conley* v. *Gibson* (1957), 355 U.S. 41, 2 L. Ed. 2d 80, citing that principle of law with approval as set forth in the *Marty Case*.)

In *Duller* v. *De Butterville* v. *Scoville* (9CA, 1956), 239 F. 2d 824, that Court (citing 23 U.S. 246, 252 U.S. 286, and the *Albertson Case*, 182 F. 2d 397), it was held:

> Subsequent pleadings of an adversary if not thereafter denied may cure a defect in the prior pleadings, both as to substantive and procedural admissions.

And in the *Albertson Case*, at p. 401, the *Court Below* said:

> "A defect in pleading even of matters of substance, may be aided and cured by the pleadings of an adverse party (authorities shown). And under modern procedural methods *pleadings are not to be struck down for non-prejudicial deficiencies.*"

See Petitioner's Printed Petition (with authorities therein shown) for a Rehearing, filed May 11, 1962 (R. 129-136). *Fair notice to defendants in modern procedural methods of pleadings is all that is required in a complaint today* (Barron and Holtzoff, Fed. Pro., p. 65, Sec. 255). See also Petitioner's Pre-Trial Statement, filed with *Pre-Trial Examiner* on May 12, 1961 (R. 187-199, see also O/R) When Judge McGuire directed that the pleadings be amended and that the parties start all over again to make issues when six (6) defendants had joined issues on the pleadings as they stood, *the whole case was blocked*. See *U.S.* v. *White County Bridge Commission etc.* (7CA, 1960), 275 F. 2d 529, at p. 535 *and Moore's Fed. Prac.*, 2d Ed., Vol. 2, p. 1711.

When Judge McGuire put pressure on Petitioner in order to clear the Docket, he ran in conflict with *Slagle* v. *U.S.*, 228 F. 2d 673 (5CA, 1956) (R. 11, 31).

D—Point Four

As to the many questions raised in the *Court Below* (R. 127), which that Court ruled as "MOOT", it is submitted *that ruling* is contrary to the well-established law of the land. In *Reserve Life Insurance Co.* v. *Frankfather*, 225 P. 2d 1035, 123 Col. 77, 39 A.L.R. 2d. 146, it was held: There are no "moot issues" or questions *where there are substantial rights or issues controverted in a case*. Certainly, in the instant case, *there were substantial rights and issues controverted* in the various questions raised in the *Court Below*, as set out in Petitioner's Printed Brief (9 copies of which are filed herewith under Rule 21(4) of this Court, with printed record (R. 1-123). Where a case is dismissed, as was instant case, by the *Trial Court*,

with prejudice, such a case should be looked at particularly with regard to its own procedural history (*Sandee Manufacturing Co.* v. *Rohm and Haas Co.* (7CA, 1962), 298 F. 2d 41). Cf. *Marshal* v. *Sawyer* (9CA, 1962); 301 F. 2d 639, citing *Conley Case, supra*. In *Preble* v. *Johnson etc.* (10CA, 1960), 275 F, 2d 275; it was held: A Court of Appeals should not dispose of cases on technicalities, save where compelled to do so under jurisdiction or by requirements of orderly judicial administration. See Opposition of Petitioner, filed May 22, 1961, to Young's Motion to set aside default judgment of May 3, 1958, and authorities cited therein (O/R). *Judge McGuire had no power under Rule 60(b)*, or otherwise, to set aside that default judgment against Young (Ap. J). In *Federal Deposit Insurance Co.* v. *Alker* v. *Welsh etc.* (3CA, 1956), 234 F. 2d 113 (on Rule 60 (b)), at pp. 116, 117, it is said:

> "It is the basic duty (of DJ) to determine whether he has power before he assumes to exercise it. He is bound just as we are to interpret and apply the Federal Rules of Civil Procedure which have the force and effect of Statutes and are binding upon him." (See 340 U.S. 193 and other authorities cited therein).

And, further,

> "We are clear, however, that the use-plaintiffs are entitled to retain full benefits of their judgment until the defendants have established by satisfactory evidence that they are entitled under Rule 60(b) to relief therefrom. Judge Welsh did not hold such a hearing. He made no such findings or conclusions. *** Moreover, he failed to follow the express directions of this Court that he should also decide the jurisdictional

question, that is, *whether the motion was one which Rule 60(b) empowered him to grant.*" (See authorities therein)

Judge McGuire in the instant case passed on the motion of Young, *arbitrarily and capriciously*, without using sound judicial judgment, and made no findings of fact or conclusions of law (R. 26, 27). See, also, *Woods* v. *Cannady* (DCCA, 1946), 158 F. 2d 184.

E—Point Five

Now, as to the *Court Below* being in error when it held, in effect, that Petitioner had been afforded fair and impartial hearings in the *Trial Court* and that he had not been deprived of *due process of law and a jury trial on the merits of the case*: See authorities cited in Printed Petition for a Rehearing, nine (9) copies of which are filed herewith, pursuant to Rule 21(4). (R. 129-135). See *Hovey* v. *Elliot*, 167 U.S. 409, and *Barber* v. *Tuberville* (DCCA, 1958), 218 F.2d 34, on jury trials after *default judgment*, for damages. And Cf. *Last Chance Mining Co.* Case cited in *Woods Case, supra*, *Duling* v. *Markun* (7CA, 1956), 231 F. 2d 833 and *Ferguson* v. *Bartel Brewing Co.* (2CA, 1961), 284 F. 2d 855; also, 77 A.L.R. 2d 1492, 1419 (n).

ARGUMENT

The basic question here is whether the *Court Below* was justified, as a matter of law and justice, in holding that the *Trial Court* was *justified in dismissing Petitioner's action with prejudice*, when seven (7) Respondents had answered

the amended complaint, as drafted, and there were motions before the Trial Court pending that had not been acted upon (See Ap. I). Petitioner says it was reversible error for the *Court Below* to do so, and that there was no flagrant refusal to follow the *sound and judicial direction* of the *Trial Court*. The *Trial Court* had violated the Statutory Rules of his own court, the Federal Rules of Procedure and ignored the construction of those rules by other Federal Courts, not only the spirit and intent of those rules, but the letter itself (R. 35-39, 28-33). After the matter was before the Pre-Trial Examiner, on the 16th day on May, 1961, and Pre-Trial Statements were filed with the Examiner, all matters should have gone before the Pre-Trial Judge that the Examiner could not dispose of under the Local Rules and in accordance with Local Rule 12 and Pretrial Instructions to Counsel of January 29, 1960 (Pine, CJ.). These Rules of Practice were promulgated, pursuant to Rule 83 of the Civil Rules of Procedure, and under Statutory Law, and should have been followed, unless they are meaningless.

When Judge McGuire acted upon and set aside another Judge's Order (Default Judgment of May 3, 1958 (Keech, J.), it was done contrary to long established practice in that Court. After a case had gone to the Pre-Trial Examiner, for proper action under those pretrial rules and instructions, as established by statutory law, the case was out of the jurisdiction of the Motions Judge. Those Pre-Trial Rules and Instructions are plain enough to understand, and should have been followed. It was reversible error on the part of the *Court Below* to affirm such erroneous actions taken and rulings made in the *Trial Court*. See Rules 38(a) and 83 (FRCP)—See Ap. I. Judge McGuire wanted to clear the Docket, whether it was justice and the

law, or not, no matter how prejudicial it might be to the Petitioner, nor how damaging, nor how contrary to Rule ONE, and the *Slagle Case*, it might be. In the *Slagle Case*, *supra*, at p. 679, that Court said:

> "The clearing of court dockets is one of the desiderata in the judicial function. But it should not be allowed to become a fetish for it does not rank with the raison d'etre of court,—the administration of justice based upon a full and fair disclosure of facts." (Case reversed)

That is the law today and what the Federal Rules of Civil Procedure intended, not only by the letter, but the clear intent and spirit; as set out in *Hickman v. Taylor*, 329 U.S. 495, at p. 501, where this Court said: Under the new rules (FRCP) a litigant must be allowed "fullest possible knowledge of the issues and facts before trial" (R. 134).

When the *Court Below* refused to *Rehear and Reconsider* its judgment and rulings of April 26, 1962, affirming the judgment of the *Trial Court* in *dismissing with prejudice* the action against all the defendants therein, its action taken was contrary to well-established law and justice as set out in the printed petition of Petitioner asking for a Rehearing, filed on May 11, 1962 (R. 129-136). When the *Court Below* held that the *Trial Court* was right in dismissing Counts Eight (8) and Nine (9) against Hilland by calling the question raised as "moot", it was reversible error under the principles laid down in *Miles v. City of Chandler* (9CA. 1961) 297 F. 2d 690, 5 F. R. Serv. 2d 54b.4, Case 3. This case involved the question where claims of multiple parties were concerned and

where a claim against one of them was not appealable. Cf. *Hardy* v. *Barkers Life and Casualty Co.* (7CA, 1955), 222 F. 2d 827, and *Federal Savings and Loan Association of Bremerton* v. *U. S.* (9CA, 1961), 295 F. 2d 481, setting forth *verbatim* Rule 54(b) as amended July 19, 1961. When the Shroyers asked for affirmative relief in the *Trial Court*, and also in the *Court Below*, they submitted themselves for all purposes to the question of jurisdiction in this case. In *Northbranch Products, Inc.* v. *Fisher* (DCCA, 1960), 284 F. 2d 611, citing the *Haddon Case*, and other authorities, it was held: Where affirmative relief is asked for as the Shroyers have done in instant case, both in the *Trial Court* and the *Court Below*, they have waived jurisdiction and submitted themselves for all purposes in this case (See R. 40-43 and O/R).

The questions involved herein, in general, are of the greatest and most material importance on practice and procedure, so far as arbitrary and summary judgments are concerned, under the Federal rules of Practice and Procedure, as well as the Local Rules of a District Court, *promulgated pursuant to Statutory Authority* (28 U.S.C.); and this Court, accordingly, should find it of such importance as to grant this writ of certiorari sought, in line with *Societe Internationale etc. and Pollor Cases*, supra, and other authorities shown, where the *Court Below* has passed judgment and held contrary to other Circuit Courts of Appeal and contrary to the law as laid down in this Court's decisions.

In view of the fact, moreover, that the *Companion Case* from the Fourth Circuit (No. 1029, October Term, 1961, filed 6/11/62) has been referred to in the Opinion of the *Court Below* and undoubtedly has been given some con-

sideration in drawing its conclusions in instant case, and since both cases with all *the Original Records* (in both cases) are now before this Court with a Petition for a Writ of Certiorari, it is suggested and requested that the two cases may be considered and passed on together, as it is elementary law that any errors or questions may be considered by this Court whether raised or not, at its discretion, in order to do justice *between man and man.*

CONCLUSION

For the foregoing reasons and authorities cited, this Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit should be granted, in order that this case may be reviewed and justice done Petitioner.

Respectfully submitted,

LUTHER ROBINSON MADDOX, Pro Se.
525 Woodward Building,
Washington 5, D. C.
(PHONES: DI 7-2323; CO 5-4111)

NOTE: EMPHASIS ADDED:

O/R—Original Record;

R.—Certified Record from Court Below;

Tr. Pro.—Transcript of Proceedings in *Trial Court;*

Ap.—Appendix.

APPENDIX A

(OPINION OF THE COURT OF APPEALS)

(Filed April 26, 1962)

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,610.

LUTHER ROBINSON MADDOX,
APPELLANT,

v.

RAYMOND O. SHROYER, et al.,
APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Decided April 26, 1962

Mr. Luther Robinson Maddox, appellant pro se, with whom Mrs. Marie Flynn Maddox was on the brief, for appellant.

Mr. William J. Donnelly, Jr., with whom Mr. Richard W. Galiher was on the brief, for appellee District Supply, Inc. and certain other appellees.

Mr. B. Austin Newton, Jr., for appellee Caraway.

Mr. James E. Hogan for appellee Hilland.

Mr. Ferdinand J. Mack entered an appearance for appellees Raymond O. and Mary K. Shroyer.

Before BAZELON, WASHINGTON and BASTIAN, Circuit Judges.

PER CURIAM:

This is an appeal from the action of the District Court dismissing with prejudice appellant's (plaintiff's) complaint.

When this case reached the pre-trial stage in the District Court, the matter came before Chief Judge McGuire on a motion to transfer the cause to Baltimore to be tried in that city with a substantially similar case involving substantially similar facts against substantially the same parties.[1]

The court denied the motion and advised appellant as follows:

> ". . . . First of all, the pleadings are extremely voluminous and offend every rule in the Rules of Civil Procedure. Your complaint should be concise, condensed and to the point but, in certain instances, the complaint here or the amended complaint runs into pages. The case should be dismissed, actually, for

[1] We are advised that this case in Baltimore has since been tried, decided adversly to appellant, and the decision of the District Court affirmed by the United States Court of Appeals for the Fourth Circuit. *Maddox* v. *Fidelity Investment & Title Co.*, F. 2d

a vicious and grievous violation of the Federal Rules of Civil Procedure. **** This case will be pre-tried on the 16th day of May. That means you will get your pleadings in order and this case will be tried on the first day of June. If you don't get your pleadings in order by the 16th of May—and I will still be the Motions Court—I will dismiss it. I tell you that quite frankly. We are not going to live with this type of litigation . . . . I am directing you to get your pleadings in order. You submit a new complaint of an Amended Character. It should be confined, under the rules, to a fair, condensed, accurate statement of the alleged facts that you rely on. The answer should be the same. I am going to direct the pre-trial Examiner, if this matter is referred to the pretrial Examiner on the 16th day of May, as it will be, if the pleadings do not conform, I will dismiss the case."

Some two months later, on April 18, 1961, the Court entered an order, containing, among other things, the following:

"The Court having reviewed the file in this cause, and having noted that the same has been pending since 1957; that the record in this cause consists (of) three lengthy volumes; that on March 11, 1959 this Court noted—'This case is one of the causes of court congestion which we are finally beginning to catch up with . . .'; and that the plaintiff's pleadings do not conform with the spirit and letter of the Federal Rules of Civil Procedure, it is by the Court this 18th day of April, 1961,

"ORDERED, that this cause of action is to be pre-

tried on May 16, 1961, and thereafter set for trial on June 1, 1961.

"IT IS FURTHER ORDERED, that the plaintiff is hereby directed to have his pleadings comply with the requirements of the Federal Rules of Civil Procedure at the time of pre-trial, and that, if the pleadings have not been placed in proper posture by that time, this cause will be dismissed with prejudice."

On May 16 the case again came before Chief Judge McGuire as, up to that time, appellant had evidenced no effort whatsoever to comply with the court's order. Thereupon, the court entered a further order directing appellant to file an amended complaint within ten days from May 16, 1961, and, upon failure to do so, providing that the case be dismissed with prejudice. The ten days granted by this latter order having expired and appellant having failed to comply with the directions of the court, the court, on June 1, 1961, entered the order appealed from and dismissed the cause with prejudice.

While dismissal for failure to comply with the Rules is a seemingly severe sanction, nevertheless we think that the court in this case was amply justified in the action which it took, particularly in view of the flagrant refusal of appellant to follow the sound and proper directions of the District Court. Cf. *Condol* v. *Baltimore & O. R. Co.*, 91 U. S. App. D.C. 255, 199 F. 2d 400 (1952); *McCann* v. *Clark*, 89 U.S. App. D.C. 166, 191 F. 2d 476 (1951).

The judgment of the District Court is affirmed.

Affirmation of the judgment renders moot the other questions raised by appellant.

Affirmed.

APPENDIX B

(ORDER OF JUDGE McGUIRE, R. 21)

* * *

(FILED FEB. 19, 1959)

This cause having come on to be heard on the motion of B. Austin Newton, Jr., attorney for defendant J. Lewey Caraway, to continue the taking of his, B. Austin Newton, Jr.,'s deposition from 10 a.m. February 14, 1959, to 10 a.m. February 21, 1959, and it appearing to the Court that this cause was filed in the month of May, 1957, it is by the Court, this 18th day of February, 1959, ORDERED that the motion to continue the taking of the Deposition of B. Austin Newton, Jr., from 10 a.m. February 14, 1959, to 10 a.m. February 21, 1959, be and the same is hereby granted.

IT IS FURTHER ORDERED that this cause is to be certified as ready for trial not later then April 15, 1959, and all discovery procedures are to be completed in this cause by that time.

/s/ MATTHEW F. McGUIRE, *Judge*

(ORDER OF JUDGE McGUIRE, R. 24, 25)

* * *

(FILED April 18, 1961)

Upon consideration of the Plaintiff's motion to transfer this cause to the United States District Court in Baltimore, Maryland, or alternately, to stay this cause pending disposition of a related cause in the United States District Court in Baltimore, Maryland, and the plaintiff's motion for judgment by default against the District Supply, Inc., it is by the Court this 18th day of April, 1961, ORDERED, that the foregoing Motions be and the same hereby are denied.

Upon consideration of the witness Austin Carlin's Motion to quash service of the subpoena upon him for the purpose of taking his deposition, it is by the Court this 18th day of April 1961, ORDERED, that the witness Carlin's Motion be denied without prejudice.

The Court, having reviewed the file in this cause, and having noted that the same has been pending since 1957; that the record in this cause consists (of) three lengthy volumes; that on March 11, 1959, this Court noted—"This case is one of the causes of court congestion which we are finally beginning to catch up with . . ."; and that the plaintiff's pleadings do not conform with the spirit and letter of the Federal Rules of Civil Procedure, it is by the Court this 18th day of April, 1961, ORDERED, that this cause of action is to be pre-tried on May 16, 1961, and thereafter set for trial on June 1, 1961.

IT IS FURTHER ORDERED, that the plaintiff is

hereby directed to have his pleadings comply with the requirements of the Federal Rules of Civil Procedure at the time of pre-trial, and that, if the pleadings have not been placed in proper posture by that time, this cause will be dismissed with prejudice.

/s/ MATTHEW F. McGUIRE, *Judge*

(See p. 12, Tr. of Pro. 4/11/61. Also, Local Rule 12, O/R) (and R. 8-20)

(ORDER OF JUDGE McGUIRE, R. 26, 27)

* * *

(Filed May 26, 1961)

Upon consideration of the defendant Elmer L. Young's motion to vacate the default judgment entered against him on May 3, 1958, the points and authorities in support of the motion, the affidavit of Richard W. Galiher, and the plaintiff's opposition to the motion filed on May 22, 1961, ORDERED that the motion to vacate the default judgment entered against the defendant Elmer L. Young is granted, and further ORDERED that the verified answer signed by the defendant Elmer L. Young and attached with a motion to vacate the default judgment against him may be filed forthwith this 26th day of May, 1961.

/s/ MATTHEW F. McGUIRE, *Judge*

(NOTE: This order was signed before Plaintiff received a copy) . . . . (See Certificate of Service) . . . O/R

(ORDER OF JUDGE McGUIRE, R. 28)

* * *

(Filed June 1, 1961)

It appearing of record this 1st day of June, 1961, that the plaintiff has not filed amended pleadings pursuant to the Orders of this Court dated April 18, 1961, and May 25, 1961, it is ORDERED that the plaintiff's cause of action against all the defendants herein is dismissed with prejudice.

/s/ MATTHEW F. McGUIRE, *Judge*

(ORDER OF JUDGE McGUIRE, R. 34)

* * *

(Filed May 25, 1961)

This cause having come on for pre-trial on May 16, 1961, and the question of the plaintiff's failure to file amended pleadings as directed by this Court's order of April 18, 1961, having been submitted to the Motions Court in absence of the pre-trial Judge, it is by the Court, this 25th day of May, 1961,

ORDERED and DIRECTED that the plaintiff file an amended complaint to conform with the spirit and letter of the Federal Rules of Civil Procedure, within ten days from May 16, 1961, and upon failure to so do this cause will be dismissed with prejudice.

/s/ MATTHEW F. McGUIRE, *Judge*

(See R. 14-20 and O/R, Tr. Pro. 5/16/61)

(ORDER OF JUDGE McGUIRE, R. 34)

* * *

(Filed June 28, 1961)

This cause having come on to be considered on June 21, 1961, on the plaintiff's motion to vacate and set aside the final order and judgment of June 1, 1961, dismissing this action against all of the defendants herein, and/or for further and other relief, and after due consideration thereof it is by the Court this 27th day of June, 1961, ORDERED that the plaintiff's motion be, and the same is hereby denied.

/s/ MATTHEW F. McGUIRE, *Judge*

APPENDIX C

(ORDER OF JUDGE CURRAN, R. 77)

* * *

(Filed July 30, 1958)

This action came on for hearing on June 23, 1958, upon the motion of the plaintiff for an order directing the defendant Arthur J. Hilland to answer interrogatories served upon him, and upon the motion of Arthur J. Hilland to dismiss, and thereupon, upon consideration thereof, and after oral argument of counsel, it is by the Court, this 21st day of July, 1958, ORDERED, that the motion of the

plaintiff for an order directing the defendant Arthur J. Hilland to answer interrogatories served upon him be, and hereby is, denied; that the motion of the defendant Arthur J. Hilland to dismiss be, and the same is, hereby granted, with leave to plaintiff to amend within 10 days.

/s/ EDWARD M. CURRAN, *Judge*

(Certificate of Mailing shows "1st day of July 1958" by Mr. Mack, see O/R)

(ORDER OF JUDGE CURRAN, R. 78, 79)

* * *

(Filed September 15, 1959)

This action came on for hearing upon the motion of the additional defendant Arthur J. Hilland to dismiss the amended count as to Arthur J. Hilland and added as ninth count and to dismiss the amended eighth count as to the defendant Arthur J. Hilland, and thereupon, upon consideration thereof and after argument of counsel, it is by the Court, this 15th day of September, 1959, ORDERED, that the motion of the additional defendant Arthur J. Hilland to dismiss the amended count as to Arthur J. Hilland and added as the ninth count, and to dismiss the amended eighth count as to Arthur J. Hilland be, and the same hereby is, granted.

/s/ EDWARD M. CURRAN, *Judge*

(SERVICE CERTIFICATE SHOWS 21st DAY OF JULY, 1959—SEE O/R)

APPENDIX D

(ORDER OF JUDGE PINE, R. 96, 97)

* * *

(Filed December 10, 1958)

Upon consideration of the motion for leave to file a supplemental complaint in Counts Ten and Eleven as Section Nine hereof, and to add two defendants, Ferdinand J. Mack and William J. Donnelly, Jr., as defendants Nos. 15 and 16, it is by the Court, this 10th day of December, 1958, ORDERED, that the same be and is hereby denied.

/s/ DAVID A. PINE, *Judge*

(ORDER OF JUDGE PINE, R. 96, 115)

* * *

(Filed June 26, 1959)

Upon consideration of plaintiff's motion filed herein on December 20, 1958, and submitted to this Court on April 4, 1959, "to vacate and set aside order of December 10, 1958," and "to reconsider ruling and finding of November 20, 1958" or in the alternative, to "sign proposed order attached hereto allowing Plaintiff right to have said order and ruling reviewed by the Court of Appeals, "it is by the Court this 26th day of June, 1959, pursuant to the decision of this Court of April 6, 1959,

ORDERED, that said motion be and the same is hereby denied.

/s/ DAVID A. PIXE, *Judge*

APPENDIX E

(ORDER OF JUDGE HART: R. 40, 71)

* * *

(Filed June 29, 1960)

The matter came on to be heard before the Court on June 28, 1960, on motion of the plaintiff for "An Order Directing Richard W. Galiher, F. Archie Meatyard, Jr., Arthur J. Hilland, Benjamin W. Guy, 2d, Ferdinand J. Mack, and others, As Shown Below, to Answer Certain Questions, As Witnesses in the Above-Entitled Cause, Fully and Responsively, in Accordance with Rule 26 and 33, Federal Rules of Civil Procedure; and/or For Such Other and Further Relief as Justice and the Law Construing Those Rules May Require, and it appearing to the Court that the questions which the plaintiff seeks to have answered call for information which is either irrelevant or privileged as a result of the attorney-client relationship, it is by the Court, this 29th day of June, 1960, ORDERED that the motion be, and the same hereby is, denied.

/s/ GEORGE L. HART, JR., *Judge*

Copy mailed to: (June 29, 1960)

Luther Robinson Maddox
Woodward Building.
Washington, D.C.

Attorney for Plaintiff /s/ James E. Hogan

(ORDER OF JUDGE HART, R. 46-71)

* * *

(Filed August 10, 1960)

Upon consideration of the plaintiff's motion to vacate and set aside the order and judgment of this Court, dated June 29, 1960, denying his motion for an order directing certain witnesses to answer questions which they refused to answer upon oral examination, and for such other and further relief as justice might require and for a reconsideration and an oral hearing thereon, it is by the Court, this 10th day of August, 1960, ORDERED that the Plaintiff's motion be, and the same hereby is, denied.

/s/ GEORGE L. HART, JR., *Judge*

APPENDIX F

(ORDER OF JUDGE HOLTZOFF, R. 115)

* * *

(Filed November 6, 1959)

The motion of the plaintiff for an order, in the above-entitled cause, to direct Witness Owen E. Osborne to

answer certain questions he refused to answer upon the taking of his deposition on August 31, 1959, by the plaintiff, and said motion having come on for a hearing and having been considered by the Court on November 2, 1959, it is this 6 day of November, 1959, ORDERED:

(1) That the motion of the plaintiff be, and hereby is, continued to Friday, November 20, 1959; and, (2) It is further ordered that the Witness Owen E. Osborne appear in this court on Friday, November 20, 1959, at 10:00 A.M., to show cause why he should not answer the questions set forth in plaintiff's motion, copy of which was served upon said Witness under date of September 25, 1959, by mail, if cause can be shown by him.

/s/ ALEXANDER HOLTZOFF, *Judge*

(MEMORANDUM OF JUDGE MATTHEWS, R. 115, 116)

* * *

(Filed December 28, 1959)

The matter before the court is plaintiff's "motion for an order directing witness Owen E. Osborne to answer certain questions he refused to answer on oral examination." The motion will be denied. Annotated Code of Maryland, Vol. 4, 1957 Edition, Art. 35, Section 13. Mullen v. U.S. decided December 4, 1958 by the United States Court of Appeals for the District of Columbia Circuit. See statement of Judge Fahy concurred in by Judge Edgerton, filed January 29, 1959.

/s/ BURNITA SHELTON MATTHEWS, *Judge*

December 28, 1959.

(ORDER OF JUDGE MATTHEWS, R. 116)

* * *

(Filed March 14, 1960)

Upon consideration of the motion entitled "Motion for an order directing witness Owen E. Osborne to answer certain questions", etc., filed herein September 26, 1959, the opposition thereto, and counsel having argued the matter in open court on November 20, 1959, and the Court having filed herein on December 28, 1959, a memorandum pertaining to said motion, and upon consideration of so much of plaintiff's motion filed herein March 12, 1960, as seeks an amendment of said memorandum, it is by the Court this 14th day of March, 1960: ORDERED that said motion filed herein September 26, 1959, for an order directing Owen E. Osborne to answer certain questions be and the same is hereby denied and that the rule to show cause against the said Osborne incorporated in the order herein of November 6, 1959, be and the same is hereby discharged, and it is further ORDERED that so much of plaintiff's motion of March 12, 1960, as seeks an amendment of the aforesaid memorandum of the Court be and the same is hereby denied.

/s/ BURNITA SHELTON MATTHEWS, *Judge*

(Filed March 12, 1960)

PLAINTIFF'S MOTION TO AMEND MEMORANDUM OPINION OF DECEMBER 28, 1959, AND/OR FOR OTHER AND FURTHER RELIEF (R. 116, 117—See O/R)

Plaintiff moves the Court: (1) To amend its Memorandum Opinion of December 28, 1959, to make the first paragraph read: "The matter before the court is Plaintiff's Motion for an order directing witness Owen E. Osborne to answer certain questions he refused to answer upon an oral examination and pursuant to a Rule of this Court under date of November 6, 1959 (Holtzoff, J.) for the said Osborne to show cause why he should not answer the questions set forth in Plaintiff's Motion, filed in this cause on September 25, 1959."

And to add to second paragraph, at the beginning, "And the matter came on for a hearing and argument in open court on Friday, November 20, 1959, with the said Osborne present and his counsel (H. Dawson Penniman of Baltimore, Maryland), appearing specially, and the said Motion ~~having been~~ having been argued by counsel on that date and taken under advisement by the Court, the Motion will be denied and the Rule quashed."

* * *

APPENDIX G

---

* * *

(ORDER OF JUDGE HOLTZOFF, R. 117, 118)

(Filed October 16, 1957)

The motions of the defendants, District Supply, Inc., Charles Visek, Individually, and as President thereof (defendants number 5 and 6), and J. Lewey Caraway (defendant number 3), to dismiss the complaint filed in the about-entitled cause, came on for a hearing on October 8, 1957, and upon consideration thereof by the Court, it is this 16 day of October, 1957, ORDERED:

1. That the Motion of the District Supply, Inc., and Charles Visek, its President, both individually and as President thereof (defendants number 5 and 6) to dismiss the complaint filed herein, be, and hereby is, denied; 2. That the Motion of J. Lewey Caraway (defendant number 3) to dismiss the complaint filed herein, or in the alternative to grant summary judgment, be, and hereby is, denied.

/s/ ALEXANDER HOLTZOFF, *Judge*

(See pp. 17-26, Tr. Pro. 10/8/57)
O/R

(ORDER OF JUDGE HOLTZOFF, R. 118)

* * *

(Filed November 4, 1957)

The motion of the defendant Number 3, J. Lewey Caraway, to strike the Amended Complaint of the Plaintiff, *filed in the above-entitled cause, came on for hearing on* October 29, 1957, and upon consideration by the Court,

it is this 4th day of November, 1957, ORDERED: (1) That the motion of the defendant J. Lewey Caraway to strike the Amended Complaint of Plaintiff filed herein be, and hereby is, denied; and (2) Further, that the defendant, J. Lewey Caraway, be, and hereby is, granted ten (10) days within which to answer the Plaintiff's Amended Complaint.

/s/ ALEXANDER HOLTZOFF, *Judge*

(See pp. 24, Tr. Pro. 10/29/57)
O/R

(Filed October 24, 1957)

ANSWER OF DEFENDANTS, DISTRICT SUPPLY, INC., AND CHARLES VISEK, TO AMENDED COMPLAINT (SEE O/R and R. 118)

(Filed November 6, 1957)

ANSWER OF DEFENDANT CARAWAY TO THE AMENDED COMPLAINT (SEE O/R and R. 118)

(FILED APRIL 28, 1958)

ANSWER OF DEFENDANTS, STANLEY VISEK, PORRECA, AND SMITH, INDIVIDUALLY AND IN THEIR DESIGNATED CAPACITIES (SEE O/R and R. 119)

(ORDER FOR DEFAULT JUDGMENT AGAINST ELMER L. YOUNG (R. 119))

(Filed May 3, 1958)

Upon oral motion of the plaintiff herein for an Order Pro Confesso against one of the defendants in the above-entitled cause, pursuant to Rule 55(b)(2) FRCP; and it appearing that the defendant Elmer L. Young was served on April 11, 1958, personally, in Washington, D. C., by the Marshal of this Court with a copy of the complaint and a summons to answer within twenty days from said date, and serve a copy thereof on the plaintiff or his attorney within that period; and it further appearing that the said defendant Young has not done so, but has defaulted; and it appears further that the said defendant has not been granted an extension of time within which to plead or serve an answer thereto, it is this 3d day of May, 1958, ORDERED:

(1) That the motion of the plaintiff be, and hereby is, granted; and,

(2) That the Clerk of this Court will, and is hereby so directed, to enter a default Pro Confesso judgment, as set forth in Count Seven of the complaint herein; subject to proof of amount of damages, to be determined at the trial hereof, or at an earlier hearing for that purpose as may be directed by this Court, against the defendant Elmer L. Young, Individually; and as General Manager and Director of the District Supply, Inc.

/s/ R. W. KEECH, *Judge*

APPENDIX H

(Filed March 4, 1959)

MOTION TO FIX NEW TIME AND PLACE FOR TAKING OF DEPOSITION (OF DEFENDANTS SHROYER, R. 39)

Defendants Raymond O. Shroyer and Mary K. Shroyer respectively move the Court to order that their depositions, now scheduled to be taken March 7, 1959, at ten o'clock, a.m. and two-thirty o'clock, p.m. respectively in Baltimore, State of Maryland, be rescheduled to be taken on Tuesday, March 10, 1959, at ten o'clock a.m. and two-thirty o'clock, p.m. respectively, at any location within Washington, District of Columbia, and assert grounds in support thereof as follows: 1. It would suit the convenience of the deponents for the depositions to be taken March 10, 1959, within the District of Columbia. 2. All counsel of record maintain offices within Washington, District of Columbia. 3. And for such other and further reasons as may be urged upon oral hearing hereof.

/s/ FERDINAND J. MACK
Attorney for defendants Raymond O. Shroyer and Mary K. Shroyer

NOTICE OF MOTION

Please take notice that the above-entitled motion will be brought on for hearing before Judge Matthew F. McGuire

of the United States District Court for the District of Columbia, at ten o'clock, a.m. on March 5, 1959.

/s/ FERDINAND J. MACK

(See O/R)

(ORDER OF JUDGE McGUIRE, R. 40)

* * *

(Filed March 11, 1959)

This cause having come on to be heard on the motion of the defendants Raymond O. Shroyer and Mary K. Shroyer to continue the taking of their depositions upon an oral examination, set for March 7, 1959, at ten o'clock a.m., and two-thirty o'clock, p.m., respectively, in Baltimore, Maryland, and for rescheduling of said examination in Washington, District of Columbia, on Tuesday, March 10, 1959, and said motion having been considered by the Court, as a preliminary matter, it is this 11th day of March, 1959, ORDERED: That the motion of the defendants Raymond O. Shroyer and Mary K. Shroyer to continue the taking of their deposition upon an oral examination, set for March 7, 1959, and a rescheduling of said date for an examination, be and hereby is, denied.

/s/ MATTHEW F. McGUIRE, *Judge*

(SEE PLAINTIFF'S MOTION TO CONTINUE AND RESCHEDULE NOTICE AND DATE FOR TAKING DEPOSITIONS OF RAYMOND O. SHROYER AND MARY K. SHROYER AS WITNESSES FOR PLAINTIFF, ETC. (FILED MARCH 19, 1959)—IN

MARGIN: "DENIED 3/19/59. McGUIRE, J.")—SEE O/R. and R. 41.

* * *

(ORDER OF JUDGE McGUIRE, R. 41)

* * *

(Filed March 19, 1959)

The motion to consider and reschedule notice for taking of deposition of Raymond O. Shroyer and Mary K. Shroyer as witnesses for the Plaintiff upon an oral examination, filed March 19, 1959, and served upon opposing counsel March 18, 1959, having been called to the Court's attention as a preliminary matter, and argument by movant having been heard, it is by the Court this 19th day of March, 1959, ORDERED, That the motion to continue and reschedule Notice and date for taking of depositions of Raymond O. Shroyer and Mary K. Shroyer as witnesses for Plaintiff upon an oral examination be and the same is hereby denied.

/s/ MATTHEW F. McGUIRE, *Judge*

(ON LETTERHEAD OF MADDOX)—R. 40, see O/R.

* * *

April 2, 1959

Dear Judge McGuire:

Referring to the Order of Denial of Plaintiff's motion, dated March 19, 1959, and entered of record on same date, requesting continuance and rescheduling of Notice

to take depositions of Raymond O. Shroyer and Mary K. Shroyer, and for other relief, it is requested that Your Honor place in the record of this case your reasons for such denial; for it is believed that it may be material and important to Plaintiff in any further proceedings he may have or take in the United States District Court for the District of Maryland in connection with the depositions of the said Shroyers.

Respectfully yours,

/s/ LUTHER ROBINSON MADDOX

(Filed April 1, 1959)

MOTION OF RAYMOND O. SHROYER AND MARY K. SHROYER FOR PROTECTION OF DEPONENTS

(R. 41, 42, and see O/R)

Raymond O. Shroyer and Mary K. Shroyer, proposed deponents herein, move the Court, for their protection, to order that their depositions which have been noted herein, tentatively for April 4, 1959, not be taken, and assert grounds in support thereof as follows: 1. In response to subpoenas served upon them, Raymond O. Shroyer and Mary K. Shroyer responded to have their depositions taken on March 7, 1959, at ten o'clock, a.m. and two-thirty o'clock p.m., respectively, accompanied by counsel. At that time Plaintiff, pro se, took only a limited deposition of each of the witnesses and terminated the depositions. 2. Subsequent to the depositions taken on March 7, 1959, Mr. Maddox moved to continue those depositions and to reschedule those depositions. By order of this Court dated March 19, 1959, Mr. Maddox's motion to continue and

reschedule the depositions of Raymond O. Shroyer and Mary K. Shroyer was denied. 3. On March 24, 1959, counsel for Raymond O. Shroyer and Mary K. Shroyer wrote the Honorable W. Calvin Chesnut, Judge, United States District Court for the District of Maryland, a copy of said letter being attached hereto and made a part hereof and designated Exhibit A. 4. Further depositions of Raymond O. Shroyer and Mary K. Shroyer constitute oppression, abuse of the rules of discovery of the Federal Rules of Civil Procedure and impose unwarranted hardship upon the prospective deponents.

/s/ FERDINAND J. MACK

(SEE OPPOSITION OF PLAINTIFF FOR PROTECTIVE ORDER OF SHROYERS, AND FOR OTHER RELIEF, FILED APRIL 7, 1959)—See R. 42 and O/R

(ORDER OF JUDGE HOLTZOFF, R. 42, 43)

* * *

(Filed April 28, 1959)

The motion of Raymond O. Shroyer and Mary K. Shroyer, for a protective order that their depositions, set for April 4, 1959, not be taken, came on for a hearing and argument in open court, and upon consideration thereof, it is this 28th day of April, 1959, ORDERED: 1. That the Motion of Raymond O. Shroyer and Mary K. Shroyer for a protective order be, and hereby is, denied; and, 2. It is further ordered and directed that the depositions of Mary K. Shroyer and Raymond O. Shroyer will proceed at the designated place in NOTICE and subpoena served upon them on March 30 and 31st, respectively.

1959, on Saturday, May 2, 1959 at 10 A.M.

/s/ ALEXANDER HOLTZOFF, *Judge*

(See Copies of Depositions in O/R)

Mary K. and Raymond O. Shroyer)

(Self-explanatory)

(SEE PLAINTIFF'S MOTION FOR ADJUDICATION IN CONTEMPT RAYMOND O. SHROYER AND MARY K. SHROYER, WITH EXHIBITS, FILED JUNE 10, 1959—NO OPPOSITION FILED—SEE O/R)

APPENDIX I

THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES provides:

"No person shall be * * * deprived of life, liberty or property without due process of law;" * * *

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 1. Scope of Rules. These rules govern * * * They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 8. * * * (f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

Rule 16. Pre-Trial Procedure; Formulating Issues. In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider (1) The simplification of the issues; (2) The necessity or desirability of amendments to the pleadings; (3) The possibility of obtaining admissions of facts and of documents which will avoid unnecessary proof; * * * (6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleading, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration * * *

Rule 26. Depositions Pending Action. (a) * * * Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the cation or for both purposes. * * * The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. * * * (b) * * * Unless otherwise ordered by the court as provided by Rule 30 (b) or (d), the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. * * * It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 33. * * * Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a * * * private corporation or a partnership * * *, by any officer or agent, who shall furnish such information as is available to the party. * * * The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within fifteen days after the service of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 10 days after service of interrogatories a party may serve written objections thereto with a notice of hearing the objections at the earliest practical time. * * * Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the same extent as provided in Rule 26(d) for the use of depositions of a party. * * * The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. * * *

Rule 34. * * * Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 30(b), the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted

by Rule 26(b) and which are in his possession, custody or control; * * *

Rule 38. Jury Trial of Right. (a) * * * The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a Statute of the United States shall be preseved to the parties inviolate.

Rule 36. Admissions of Facts and of Genuineness of Documents. (a) Request for Admission. After a commencement of an action a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. * * * Copies of the documents shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than ten days after service thereof or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or, (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested ad-

mission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

Rule 45. Subpoena. * * * (d)(L) * * * The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b), but * * *

(b) * * * but the court upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith may (1) quash or modify the subpoena * * *.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

Rule 83. Rules by District Courts. Each District Court by action of a majority of the judges thereof may from time to time make and amend rule governing its practice not inconsistent with these rules. Copies of rules and amendments so made by any District Court shall upon their promulgation be furnished to the Supreme Court of the United States. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

LOCAL RULES IN EFFECT ON JUNE 1, 1961 (R. 37, 38)

(Also see R. 14-20)

* * *

(Holding an Executive Session, Filed January 29, 1960)

ORDER

It is, by the Court, this 29th day of January, 1960, ORDERED That Local Civil Rule 12, subparagraph (b), be and the same is amended to read as follows:

(b) FAILURE TO APPEAR OR TO FILE PRE-TRIAL STATEMENT.

If counsel for any party fails to appear when an action is reached in any call of the pretrial calendar before the Pretrial Judge, he may act as in case of non-appearance for final trial. If counsel for plaintiff fails to appear at the time set for pretrial hearing before the Pretrial Examiner, the Examiner shall enter the case dismissed for want of prosecution. If counsel for the *defendant fails to appear at the time set for pretrial hearing before the Pretrial Examiner, the examiner shall enter his default. If any party fails to file with the Pretrial Examiner timely his pretrial statement, the Examiner shall act as provided in the case of failure to appear for the pretrial hearing.*

It is further ORDERED That Rule 12 be and the same is hereby further amended by adding the following new paragraphs:

(f) PRETRIAL ORDER. The pretrial order when signed by counsel and by the Pretrial Examiner or Assistant Pretrial Examiner shall become the order of the court unless, within five days from the date of said order, counsel for any party files with the Clerk of the Court written objections thereto.

(g) OBJECTIONS TO EXAMINER'S ORDER. In the event objections to the pretrial order as signed by the Pretrial Examiner or Assistant Pretrial Examiner are filed timely, the matter shall be set down for hearing before the Pretrial Judge to determine whether the order of said Examiner should be approved as drafted; whether it should be approved by the court with amendments, or whether a new pretrial order should be entered by the court.

(h) PRETRIAL PROCEEDINGS. Hearings before the Pretrial Examiner and Assistant Pretrial Examiner shall be conducted pursuant to the "Pretrial Instructions to Counsel" approved by the Court; as they may be amended from time to time.

(i) REQUESTS FOR STIPULATIONS. Requests for stipulations as to matters of fact or the genuineness of documents presented at pretrial for identification and stipulation, shall be deemed requests for admissions within Rule 36, F.R.C.P., and subject to the sanctions in this respect provided by Rule 37(c), F.R.C.P.

/s/ DAVID A. PINE, *Chief Judge*

PRETRIAL INSTRUCTIONS TO COUNSEL (EXCERPTS)

The following instructions to counsel governing pretrial proceedings have been adopted by the Court with a view to effecting the maximum narrowing of the issues in all cases prior to trial, with resulting expedition of trials.

In applying the instructions, counsel should bear in mind

the purpose of pretrial proceedings, and that to be effective pretrial requires the full cooperation of all attorneys. Any time which may be consumed by the Pretrial Examiner and counsel in conducting a thorough pretrial hearing, or be devoted by counsel to preparation for trial, not only saves an equivalent or longer period of time during the course of trial for the court, counsel, jury, witnesses, and parties, but also obviates unnecessary costs of trial which result to all concerned from delays which could have been avoided by a thorough pretrial.

Table of Contents

I. Preliminary Conference of Counsel; Statement of Agreed Facts and Issues of Fact and Law.

II. Preparation for Pretrial Hearing:

A. Pretrial Statements of Parties:

1. In General.

2. Particular Types of Action:

* * *

(b) Contract.

* * *

3. Requests for Stipulations.

4. Request for Further Discovery.

* * *

B. List of Exhibits to Be Introduced at Trial.

C. Production of Documents and Other Exhibits at Pretrial Hearing:

* * *

2. Particular Types of Action:

* * *

(b) Contract.

* * *

3. Depositions.

* * *

III. Pretrial Hearing:

* * *

4. Pretrial Order:

* * *

(c) Hearing before Pretrial Judge.

5. Other References to Pretrial Judge:

(a) Judicial Rulings

(b) Amendments to pleadings

* * *

(d) Removal from Ready Calendar.

6. Assignment for Pretrial.

7. Continuances.

IV. Motions:

1. Pending Motions.

2. Request for Further Discovery.

3. Request to File Motion.

V. Settlement Conferences:

1. With Pretrial Examiner.

2. With Pretrial Judge.

VI. Failure of Counsel to Comply with Instructions:

1. In General.
2. Failure to Appear for Pretrial Hearing.
3. Failure to File Pretrial Statement.
4. Failure to Produce Documents.
5. Refusal to Stipulate.

* * *

PRELIMINARY CONFERENCE OF COUNSEL; STATEMENT OF AGREED FACTS AND ISSUES OF FACTS AND LAW:

(a) Prior to filing with the Pretrial Examiner their pretrial statement, counsel for the respective parties should confer and, if at all possible, prepare a written joint statement * * *

1. * * *

In contract cases, all documents claimed to constitute the contract, the authenticity thereof, and the facts of execution. * * *

2. The contested issues of fact.

3. The contested issues of law.

4. A list of the documents or other exhibits as to which counsel will stipulate, and what will be stipulated as to each of them.

(b) In all cases involving extensive documentary evidence, counsel must, prior to pretrial hearing, confer with a view to being prepared to stipulate at the hearing, so far as possible, to the introduction of such documents, in the

interest of avoiding unnecessary prolongation of the pretrial hearing.

II. *Preparation for Pretrial Hearing.*

A. *Pretrial Statements of Parties:*

1. *In General:* Counsel for the respective parties *shall prepare* written pretrial statements. In every case such statement shall contain in concise form a concrete and precise outline of the party's version of the transaction or events out of which the claim or counterclaim arises, or his defense to such claim or counterclaim, including his contentions as to the facts and law. * * *.

2. *Particular Type of Action.* * * *

3. *Requests for Stipulations:* Each party shall include in his pretrial statement a list of stipulations of fact or genuineness of documents which he requests of opposing counsel.

4. *Requests for Further Discovery:* Each party shall include in his pretrial statement a request for any further discovery which he may desire prior to trial, such as medical examination or deposition.

5. *Estimate of Trial Time.* Counsel shall include a statement as to his estimate of the length of trial time his case in chief or defense will require.

6. *Filing and Service:* Pretrial Statements of counsel *shall be filed with the Pretrial Examiner and served upon opposing counsel at least forty-eight hours before the time fixed for pretrial hearing.* Pretrial statements in case

set for Monday shall be filed not later than the preceding Friday. * * *

B. *List of Exhibits to be Introduced at Trial.* Counsel shall submit at the time of pretrial hearing a list of all documents and other exhibits such party expects to offer at the trial, other than those to be used for impeachment or rebuttal, with a description of each document or exhibit sufficient for identification.

C. *Production of Documents and Other Exhibits at Pretrial Hearing*:

1. *In General*: Counsel shall produce at the pretrial hearing all documentary evidence, or copies thereof, and other exhibits to be introduced at the trial, for initialing by the Examiner and for such stipulation as to their introduction as opposing counsel may make.

2. *Particular Types of Actions*: The nature of the case will govern the type of documentary evidence or other exhibits to be presented. In the following types of action, if applicable, the documents and exhibits presented shall include, but not to be limited to, the following:

(a) * * *

(b) *Contract*: Any written contract relied upon. Any writing alleged to constitute a collateral agreement or misrepresentation of fact inducing the contract. Any writing affecting the obligations of the contract, such as amendments thereto, change orders, or correspondence or other writing effecting a waiver of covenant, etc.

* * *

3. *Depositions*: Each party shall produce any deposition intended to be used at the trial for other than impeachment purposes which is not part of the record in this Court, and shall indicate the portions of any deposition which he intends to use, whether it be in the record or not.

D. *List of Witnesses*: Each party should submit at the pretrial hearing a list containing the names and addresses of all witnesses whom he intends to use at the time of trial, except those who may be used for rebuttal or impeachment purposes. If practicable, such witnesses shall be classified as to the issue on which they will testify.

* * *

III. *Pretrial Hearing*:

1. *Hearing by Examiner or Judge*: Pretrial hearings will be conducted by the Pretrial Examiner under the direction and supervision of the Pretrial Judge or by the Pretrial Judge.

2. *Counsel*: Counsel appearing at pretrial should preferably be counsel who will try the case, but in any event he must be thoroughly familiar with the case and fully authorized to act and enter into stipulations. * * *

3. *Stipulations*: Counsel shall be prepared to stipulate at the pretrial hearing as many pertinent facts as possible, including, but not limited to, the agreed facts set forth in any joint statement prepared by them prior to the pretrial hearing, such as all formal facts of record and the authenticity and admissibility of documents or other exhibits.

4. *Pretrial Order*:

(a) *Contents*: The pretrial order will contain a

concise but specific statement of the respective parties' contentions of fact and law and a statement of special or other damages claimed or other relief sought, together with stipulations as to matters of fact, genuineness of documents, admissibility of evidence, or further discovery, and a statement as to any request by counsel to file a further motion or to amend his pleadings, with any special comment or recommendation which the Pretrial Examiner may deem appropriate. It shall be signed by the Pretrial Examiner and respective counsel.

(b) *Objections*: The order signed by the Pretrial Examiner will be the order of the court, unless, within five days from the date said order is signed by such Examiner, counsel for any party files with the Clerk of the Court written objections thereto and serves a copy thereof upon opposing counsel.

(c) *Hearing Before Pretrial Judge*: In the event objections to the pretrial order as signed by the Pretrial Examiner are filed timely, the objections will be set down for hearing before the Pretrial Judge to determine whether the order of said Examiner should be adopted as the court's order, whether it should be adopted by the court with amendments thereto, or whether a new pretrial order should be entered by the court.

5. *Other References to Pretrial Judge*:

(a) *Judicial Rulings*: If in any matter coming before the Pretrial Examiner it appears that a ruling or decision of the court is necessary or desirable, the matter will be referred by the Pretrial Examiner to the Pretrial Judge.

(b) *Amendments to Pleadings*: If at the pretrial hearing request is made by counsel for leave to amend his complaint or answer and opposing counsel does not object

thereto, the Pretrial Examiner may grant the request with the proviso that such amendment shall not interfere with the trial date of the case, and will note such action in the pretrial order. In the event opposing counsel objects to a requested amendment of the pleadings, the Pretrial Examiner will include in the pretrial order signed by him a statement of the request for leave to amend and objections thereto, and the matter will be referred to the Pretrial Judge. The Pretrial Judge will note his decision on the face of the pretrial order; and if leave to amend is granted, no further formal amendment of the pleadings will be required. If a requested amendment allowed by the Pretrial Judge over objection necessitates further discovery by opposing counsel, the Judge, at the time of allowing the amendment, will order the case removed from the Ready Calendar.

(c) * * *

(d) *Removal from Ready Calendar*: If in any case set for pretrial it appears to the Pretrial Examiner that the case is not in a posture for pretrial and should be removed from the Ready Calendar, he will so recommend and submit the matter to the Pretrial Judge for decision.

6. *Assignment for Pretrial*: Cases will ordinarily be set down by the Assignment Commissioner for pretrial hearing as they are reached on the Ready Calendar.

7. *Continuances*: Continuances will be granted only for good cause shown. * * *

IV. *Motions.*

1. If there is a motion pending in any case set

down for pretrial, the Pretrial Examiner will continue the pretrial until after disposition of such motion.

2. *Request for Further Discovery*: If at the pretrial hearing request is made by counsel for leave to take a deposition or to have a medical examination or other further discovery and opposing counsel does not object thereto, the Pretrial Examiner may grant the request with the proviso that such further discovery shall not interfere with the trial date of the case, and will note such action in the pretrial order.

3. *Request to File Motion*: If opposing counsel objects to requested further discovery or if counsel desires to file any other motion, he shall prepare such motion in writing and apply to the Pretrial Judge for leave to file it, pursuant to Local Civil Rule 11(f).

V. *Settlement Conferences*: * * *

VI. *Failure of Counsel to Comply with Instructions*:

1. *In General*: Failure to comply with these instructions may result in the case being stricken from the Ready Calendar or other sanction. Except for defaults as to which the Pretrial Examiner has been directed by the court to act, the Pretrial Examiner will report counsel's omission to the Pretrial Judge for decision as to sanction, if any, to be imposed.

2. *Failure to Appear for Pretrial Hearing*: If counsel for any party fails to appear when an action is reached in any call of the pretrial calendar before the Pretrial Judge, he may act as in case of non-appearance for final trial. If counsel for plaintiff fails to appear at the time

set for pretrial hearing before the Pretrial Examiner, the Examiner will enter the case dismissed for want of prosecution. *If counsel for the defendant fails to appear at the time set for pretrial hearing before the Pretrial Examiner, the Examiner will enter his default.*

3. *Failure to File Pretrial Statement. If any party fails to file a pretrial statement timely,* the Examiner will act as provided in the case of failure to appear for pretrial hearing. If either party fails to file an adequate statement, the Pretrial Examiner will pass the case for reassignment on a future date, at which time counsel shall file timely his amended pretrial statement.

4. *Failure to Produce Documents:* * * *

5. *Refusal to Stipulate:* Request for stipulations as to matters of fact or the genuineness of documents presented at pretrial for identification and stipulation will be considered requests for admissions within Rule 36, F.R.C.P. If counsel for any party refuses at the pretrial hearing to admit such matter of fact or to admit the genuineness of a document and the party requesting the admission thereafter proves the genuineness of such document or the truth of any such matter of fact, counsel for the latter may proceed as authorized by Rule 37(c), F.R.C.P.

VII. *Assistant Pretrial Examiner.* * * *

Approved by the Court:

/s/ DAVID A. PINE, *Chief Judge.*

January 29, 1960.

APPENDIX J

RULE 55. Default. * * * (FRCP)

(c) SETTING ASIDE DEFAULT. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

* * *

RULE 60. RELIEF FROM JUDGMENT OR ORDER. (FRCP)

* * *

(b) Mistakes; Inadvertence; Excusable Neglect; * * * On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; * * * The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. * * *

(NOTICE OF ASSIGNMENT COMMISSIONER)
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Pretrial Statement Due 5/29/61

Washington, 5/17/1961

No. 1183-57

Calendar No. 4749½

(Jury Action)

Maddox

v.

Shroyer et al.

Will be called for pretrial hearing at 10:00 A.M. on 5/31/61 Pre-trial Examiner Room 2403

RICHARD L. COLLINS,
Assignment Commissioner.

(NOTICE OF ASSIGNMENT COMMISSIONER)
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Pretrial Statement Due 5/12/61

Washington, 5/2/1961

No. 1183-57

Calendar No. 4749½

(Jury Action)

Maddox

v.

Shroyer et al.

Will be called for pretrial hearing at 10:00 A.M. on 5/16/61 Pre-Trial Examiner Room 2403

RICHARD L. COLLINS,
Assignment Commissioner.

CLERK'S OFFICE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1183-57

Maddox

v.

Shroyer et al.

Dear Sir:

This is to advise you that the above-entitled cause was today calendared pursuant to order of 4/18/61

Date: 4/18/61

HARRY M. HULL, *Clerk*

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 2 1962
JOHN F. DAVIS, CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 268

LUTHER ROBINSON MADDOX,
Petitioner,

vs.

RAYMOND O. SHROYER and MARY K. SHROYER, His Wife, ET AL.,
Respondents.

PETITION FOR A REHEARING ON ORDER OF OCTOBER 8, 1962, DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

LUTHER ROBINSON MADDOX, *Pro Se,*
525 Woodward Building,
Washington 5, D. C.
(PHONES: DI 7-2323; CO 5-4111)

Dated: November 2, 1962.

The Press of Lawyers Printing Company, Incorporated, Richmond 7, Virginia

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 268

LUTHER ROBINSON MADDOX,
Petitioner,

vs.

RAYMOND O. SHROYER and MARY K. SHROYER, His Wife, ET AL.,
Respondents.

PETITION FOR A REHEARING ON ORDER OF OCTOBER 8, 1962, DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, Luther Robinson Maddox, moves this Honorable Court to set aside and vacate its ORDER of October 8, 1962, denying his Petition for a Writ of Certiorari, in the above-entitled cause, and to grant him a Rehearing thereon, pursuant to Rule 58(2) of this Court, for the

following reasons and on grounds which were available to Petitioner or have come to his attention in the meantime—and not previously presented or were presented improperly by him.

I.—

THE COURT BELOW IN ITS DECISION FAILED TO FIND OR OVERLOOKED THE FACT THAT THE TRIAL COURT DID NOT MAKE A FINDING OF FACT WHEN IT VACATED THE JUDGMENT STANDING AGAINST RESPONDENT YOUNG FOR MORE THAN THREE YEARS AND THAT ITS HOLDING WAS CONTRARY TO THE MANDATORY RULE OF 60(b), FRCP, AND CONTRARY TO HOLDING IN OTHER CIRCUITS

Judge McGuire did not have the power to vacate that default judgment which had been standing for more than three years against Respondent Young. Rule 60(b), FRCP, is mandatory and he had no jurisdiction to even entertain such a motion. His Order of May 26, 1961, was not only contrary to the *Statutory Rule* but also contrary to decisions in other Circuits (JA 26, 27). Hence, this Court should review this case and fix the law for all future litigants.

In *Kathe* v. *U. S.* (9CA, 1960), 284 F. 2d 713, that Court held: Since Appellant's Motion was filed more than three years after entry of judgment the District Court was without jurisdiction to even entertain the motion to vacate such judgment. In *Rutland Transit Co.* v. *Chicago Tunnel Terminal Co.* (7CA, 1956), 233 F. 2d 655, it was held: A denial of a motion to vacate a default judgment was

proper where defendant had been guilty of "inexcusable neglect". The Trial Court made no findings in the instant case; but the record shows clearly Young and his attorney just overlooked the matter and *a default judgment was obtained on May 3, 1958 (JA 119).* That was simply "inexcusable neglect". Cf. *Jurin* v. *Wiltshire Parkway, Inc.* (DC,CA, 1956), 238 F. 2d 263; *Mayfair Extension, Inc.* v. *Magee* (DC,CA, 1957), 241 F. 2d 453 and *Kyona* v. *Clark* (DC, 1955), 20 F. Serv. 60(b) 20, Case 1.

In *City and County of Honolula* v. *U. S.* (9CA. 1955), 244 F. 2d 573, it was held: A motion for relief from a judgment on grounds of "mistake" must be filed within one (1) year from entry of judgment. Judge McGuire set this judgment aside, arbitrarily and capriciously, without a hearing on the motion and objections made by Petitioner—and without stating any reasons for so doing. It is very significant, however, that before the Opposition was filed by Petitioner, he stated that he had already made up his mind, in effect, to vacate the judgment (JA 19). The record also shows very plainly that he did not desire Petitioner to file an Opposition, for which the *Local Rule* provided.

Since litigation nowadays is so expensive—and almost too exorbitant for the ordinary man to appeal cases and obtain justice—this Court should determine now, *in this case*, whether or not Judge McGuire had the power and jurisdiction, under Rule 60(b) to even entertain, or pass on, a motion of this kind: To set aside a judgment of more than three years standing against Young.

—in order that litigants, henceforth, may know whether Rule 60(b) means what it says, or not.

II.—

IT WAS NOT ONLY UNREASONABLE BUT UNCONSCIONABLE FOR JUDGE McGUIRE TO ENTER AN ORDER ON MAY 25, 1961, DIRECTING PETITIONER TO FILE AN AMENDED COMPLAINT WITHIN TEN DAYS FROM MAY 16, 1961, UNDER THE EXISTING CONDITIONS IN THE CASE

Under such an ORDER, Petitioner had only one day within which to examine his voluminous records and file such an Amended Complaint as Judge McGuire seemed to feel was necessary in the case, after a Pre-trial Statement had been presented to the Pre-Trial Examiner and SIX (6) Respondents herein had answered the Amended Complaints as filed, setting up issues to be tried. Such an ORDER, on the face of it, was not only unreasonable but beyond the power and ability of Petitioner to comply with it—one (1) day after that ORDER was signed and filed (JA 26, 27). Moreover, Petitioner did not know about, or see, that ORDER until after it was signed and he was notified by the Clerk of the Court. Judge McGuire, *at that time*, was not the Pretrial Judge and not the Chief Judge of the Trial Court, and all these matters were actually in the hands and under the jurisdiction of the Pre-Trial Judge, according to the Pretrial Rules of the Court (See *Appendix I* to Petition for Writ).

Only Six of the Respondents filed a Pretrial Statement and that was filed with the Examiner *only on the DAY OF THE HEARING* and not in accordance with the Pre-Trial Rules (JA 14-20). No other Respondents appeared on May 16, 1961, before the Pretrial Examiner, *and they did not file a Pre-Trial Statement under the Mandatory*

Rule of the Court on Pre-Trial Procedure. Judge Matthews was the Pre-Trial Judge at that time, and under date of May 26, 1961, *pursuant to FIAT of Judge Matthews* a Motion was filed by this Petitioner asking for an Extension of time within which to complete discovery in the case and for the case to be taken from the *Ready CALENDAR.* This motion was never heard or passed upon by the Pre-Trial Judge (JA 35-39). That Motion of Petitioner speaks for itself (see original Pretrial Statements filed with the Clerk of the Court by the Pretrial Examiner, (JA 6, and original filed in this Court). If Statutory Rules are meaningless, certainly this Court should review this case and make it plain what they do or do not mean.

III.—

PETITIONER SHOULD HAVE HAD OR SHOULD HAVE ALL THE JUSTICES OF THIS COURT EXAMINE AND PASS UPON HIS CASE, INVOLVING SUCH GRAVE AND IMPORTANT QUESTIONS AS ARE PRESENTED HERE IN THIS CASE

Obviously, this case was examined during the Summer Recess when most of the Justices were away on vacations. The Petition for a Writ was DENIED on October 8, 1962, and Mr. Justice Goldberg had, at that time, been a Justice for a week (not participating according to the record). Petitioner feels and submits that he should be given the benefit of the consideration of all the Justices, a hearing and examination, by them, of this case, before the Final Judgment thereon is made. No Reply Briefs were filed in this case by the Respondents herein; and,

therefore, it is to be assumed that all statements and arguments made by this Petitioner in his Petition for a Writ must be taken as true.

The *original records* in this case are before this Court and it is submitted that such records show plainly Petitioner has been deprived of a *Jury Trial* in this case; that he has not had fair and impartial hearings in the case as the law and Constitution require; that great discrimination has been shown against him by the Trial Court; that *Due Process of Law* has not been accorded him. He should, therefore, be allowed to have all Justices of this Court examine and pass judgment on his Petition for a Writ at this time.

The *Syracuse Broadcasting Corp. Case* (2CA, 1961), 295 F. 2d 269; and cases cited therein must have been overlooked by this Court in its decision of October 8, 1962, and the cases cited therein, for that court held: Such an ORDER as Judge McGuire entered on June 1, 1961, *dismissing the action against all of the Respondents herein with prejudice was to drastic, and neither law nor justice.* When Petitioner moved to set that ORDER aside, he refused to vacate it. His action in so-doing was an abuse of discretion and showed great prejudice on his part—when there was a Motion pending to take the case from the *Ready Calendar and extend the time for further discovery in the case,* particularly when there were previous orders of his existing that had blocked discovery, and where two witnesses had been noticed for the taking of their deposition (Appendix B, pp. 34, 35 to Petition for Writ).

IV.—

For the above reasons and grounds set forth—with briefs and records in file before this Court, if necessary—Petitioner requests that he be given a REHEARING on, and a reconsideration of, the ORDER of October 8, 1962, denying his Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit, in order that justice be done under the law and the Constitution.

Respectfully submitted

LUTHER ROBINSON MADDOX, *Pro Se*,
525 Woodward Building,
Washington 5, D. C.
(PHONES: DI 7-2323; CO 5-4111)

NOTE: Emphasis added.

CERTIFICATE OF COUNSEL

I hereby certify that the above Petition for a Rehearing on order of October 8, 1962, denying Petition for a Writ of Certiorari, in the above-entitled cause, is presented in good faith and not for delay; and that the same is restricted to the grounds specified in Rule 58(2) of this Court.

LUTHER ROBINSON MADDOX, *Pro Se*,

Dated: November 2, 1962.